

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. 5

CP No. 783/IBC/NCLT/MB/MAH/2020

Under Section 7 of the Insolvency
and Bankruptcy Code, 2016 r. w.
Rule 4 of the Insolvency and
Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

In the matter of

Edelweiss Asset Reconstruction
Company Limited

Edelweiss House, Off. CST Road,
Kalina, Mumbai – 400 098

..... Petitioner

V/s

Meeti Developers Private Limited

1st Floor, MMC Centre, Vikas Park,
Link Road, Malad West, Mumbai –
400 064

..... Corporate Debtor

Heard on: 18.02.2021

Pronounced on: 05.03.2021

Coram :

Hon'ble Smt. Suchitra Kanuparthi, Member (J)

Hon'ble Shri. Chandra Bhan Singh, Member (T)

For the Petitioner : Mr. V. R. Dhond, Advocate.

For the Respondent : Mr. Akshay Petkar, Advocate.

Per: Chandra Bhan Singh, Member (T)

ORDER

1. The Petitioner viz. 'Edelweiss Asset Reconstruction Company Limited' (hereinafter as Financial Creditors) has furnished Form No. 1 under Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as Rules) in the capacity of "Financial Creditor" by invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (hereinafter as Code) against 'Meeti Developers Private Limited' (hereinafter as 'Corporate Debtor').

2. In the requisite Form, under the head "Particulars of Financial Debt" the total amount of Debt granted is stated to be Rs. 55,00,00,000/-, and the amount claimed to be in default is Rs. 71,32,09,849/- including interest. The date of default is stated to be 01.01.2020.

SUBMISSIONS BY THE PETITIONER:

3. The Petitioner is the assignee of the Financial Debt. The Financial Debt of Rs. 55,00,00,000/- was originally disbursed by ECL Finance Limited ("Assignor Bank"), to the Corporate Debtor. This disbursement was made on 20.11.2016 pursuant to a Sanction Letter dated 14.10.2016.

4. The Petitioner mentions that a further sanction of Rs. 30,00,00,000/- was planned but never advanced because of non-compliance(s) on the part of the Corporate Debtor.

5. On 21.05.2019, the Assignor Bank assigned the debt payable under the Non-Convertible Debentures (NCD's) based credit facilities in favour of the Petitioner vide an Assignment Agreement and Catalyst Trusteeship Limited ("Catalyst") was appointed as the Debenture Trustee.

6. Thereafter 1100 redeemable non-convertible debentures with the face of Rs. 5,00,000/- for an aggregate amount of Rs. 55,00,00,000/- issued by the Corporate Debtor.

7. As per the terms and conditions mentioned in an agreement, the principal amount of the Debentures was to be redeemed by the Corporate Debtor in 6 quarterly instalments commencing from two and half years after the date of allotment of the Debentures.

8. From 01.10.2018, the Corporate Debtor started delaying in making payment. On 16.04.2019 the Corporate Debtor made a last payment which was for the interest which was due up to 31.03.2019.

9. After that no payment has been made either for interest amount or for principal amount by the Corporate Debtor. The detailed statement of account showing the payments made and the calculation of the outstanding principal amount and the interest amounts is attached to the petition. On 17.05.2019, the account of the Corporate Debtor was declared as non-performing asset (NPA).

10. Thereafter on 01.01.2020, the Debenture Trustee issued a notice of default to the Corporate Debtor since an "Event of Default" had arisen. On 27.02.2020, the total outstanding amount was Rs. 71,32,09,849/-. The Petitioner filed the present Petition on 03.03.2020.

SUBMISSIONS BY THE CORPORATE DEBTOR IN WRITTEN SUBMISSIONS:

11. The Corporate Debtor failed to file its reply to the petition. However, around the conclusion of the hearing before the Bench, it filed their written submissions.

12. The ECL Finance Limited, the Assignor Bank sanctioned a total amount of credit facilities of Rs. 85,00,00,000/- to the Corporate

Debtor on 20/11/2016 vide sanction letter Nos. ECLF/NCD/2024 and ECLF/REAP/2030.

13. The Assignor Bank had originally promised and assured the Corporate Debtor that it would grant a loan of Rs. 85,00,00,000/- to enable the Corporate Debtor to proceed with the construction of its project at Bandra being redevelopment and construction under parking scheme of New Kamal Kunj Cooperative Housing Society by constructing a new building on land admeasuring 3259.60 square metres comprised in CTS No. F/443/A/1, 33rd Road, TPS III, Bandra (West), Mumbai 400050.

14. The Corporate Debtor entered into Registered Development Agreement and Registered Supplementary Agreement with the society. The Assignor Bank had also represented and assured to the Corporate Debtor that it had the necessary expertise and bandwidth to undertake sales of the units / apartments / premises in the said project. Therefore, the Corporate Debtor had discussions with regards to them granting financial assistance to the Corporate Debtor and also selling units / apartments / premises in the project. Thus, the Assignor Bank had agreed to provide the Corporate Debtor financial assistance for enabling the Corporate Debtor to undertake the construction and execution of the said project and had also agreed to sell units / apartments / premises in the project.

15. The Corporate Debtor further mentions that, despite representing that the Corporate Debtor would be granted loan of Rs. 85,00,00,000/- , the Petitioner unilaterally bifurcated the said loan into two loans of Rs. 55,00,00,000/- and Rs. 30,00,00,000/- respectively. The Petitioner issued two separate letters both dated 14.10.2016, one for providing financial assistance by way of subscription of debenture of Rs. 55,00,00,000/- and the other for grant of a loan of Rs. 30,00,00,000/-

which would be disbursed on receipt of Commencement Certificate for the project.

16. The Corporate Debtor executed a Debenture Trust Deed on 29.11.2016 with one Catalyst Trusteeship Limited nominated by the Corporate Debtor as Debenture Trustees wherein the Corporate Debtor subscribed for debentures of the Company. The proceeds received on issuance of the debentures were to be utilised by the Corporate Debtor for meeting project development expenses and the project costs. The tenure of the debentures were 45 months and the redemption date was to start from 30th month from the date of the allotment of the debentures and the debentures were to be redeemed quarterly by the end of the 45th month in equal instalments.

17. Further the Corporate Debtor mentions that an Escrow Agreement dated 28.11.2016 was also executed whereby HDFC Bank Ltd was appointed as an Escrow Agent and a no lien bank account bearing No. 041103500000060 was opened by the Corporate Debtor with HDFC Bank Ltd. All the receivables arising out of the said project were to be deposited in this account and the entire project cost including payment of various monies to ECL such as interest payment, payment of fees, costs, charges and expenses towards construction, obtaining approvals etc. were to be made from this account. Therefore, as required by the Petitioner, the Corporate Debtor executed all the above documents in respect of the financial assistance of Rs. 55,00,00,000/- granted by the Petitioner.

18. The Corporate Debtor further submitted that the amount of Rs. 55,00,00,000/- which was disbursed by the Petitioner to the Corporate Debtor under the Debenture Trust Deed and other security documents were utilised by the Corporate Debtor for making payment to the New Kamal Kunj Cooperative Housing Society on account of corpus fund and

acquisition of certain areas. Further, out of this amount of Rs 55,00,00,000/- the Corporate Debtor paid advance rent to the existing members of the society pursuant to which they vacated their respective premises. The Corporate Debtor also incurred substantial cost and expenses for obtaining further approvals from MCGM and other regulatory authorities.

19. The Corporate Debtor vacated all the residential tenants and the shopkeepers and obtained plinth level CC on 14.06.2018 and also started the construction work. A suit was also filed in the Bombay High Court seeking eviction of certain garage owners who have garages on the periphery of the property and the Corporate Debtor had regularly informed them of the developments in the suit. The garage owners are not members of the society. Therefore, the Corporate Debtor had taken substantial steps for undertaking development work of the said project after availing of financial assistance of Rs. 55,00,00,000/- from the Petitioner.

20. The Corporate Debtor repeatedly following up with the Petitioner for the disbursement of the remaining financial assistance of Rs. 30,00,00,000/- through emails and during personal meetings, so as to proceed further with the construction work. The Petitioner had forwarded drafts of the documents to be executed for grant of the financial assistance of Rs. 30,00,00,000/- and even jointly confirmed the execution and registration dates for same and also the date of disbursement of these funds but failed to execute them and disburse the amount of Rs. 30,00,00,000/- which was utmost critical for the Corporate Debtor to proceed with the construction.

21. Due to the delay and default in providing the financial assistance of Rs. 30,00,00,000/- despite Petitioner's assurances and representations as is evident from two separate sanction letters both

dated 14.10.2016 for Rs. 55,00,00,000/- and for Rs. 30,00,00,000/-, the Corporate Debtor was forced to arrange funds from its own sources for funding the on-going construction work and was also required to pay huge amounts of rent per month to the society members who were shifted from the construction site.

22. It is further stated by the Corporate Debtor that in case the present Petition is admitted, the Corporate Debtor shall suffer a huge setback on account of the initiation of the Corporate Insolvency Resolution Process. Further, a large number of families who were residing in the Society on the Said Property and who have been forced to shift elsewhere during the redevelopment shall be left in a lurch as the initiation and completion of the Corporate Insolvency Resolution Process shall take considerable time and their lives and livelihoods shall be severely affected.

23. Further the Corporate Debtor mentions that the Corporate Debtor is ready and willing to settle the captioned matter if the Corporate Debtor is given some time so as to arrange for funds and therefore, it is not required to admit the present Petition.

24. The Corporate Debtor further states that the present Company Petition is not maintainable and is barred by Limitation. The Petitioner has filed the present proceedings claiming a debt amount of Rs. 71,32,09,849/-. The Petitioner has not provided any document, record or evidence which acknowledges the alleged debt by Corporate Debtor 3 years prior of filing of the Writ Petition. Therefore, in view of Article 137 of Limitation Act, 1963 read with Section 238A of IBC, the present Petition is barred by limitation and not maintainable.

25. It is further submitted that the present Petition is defective on account of non-compliance of mandatory requirement u/s 7 (3) (a) of the IBC. As per section 7 (3)(a) of the said IBC, the Petitioner is

required to furnish record of default recorded with the information utility or other record or evidence of record. It appears that Petitioner has failed to furnish such record of default with either information utility or any other evidence. The Adjudicating Authority is required to ascertain the existence of default on the basis of the report an information utility. In the present Petition, the Petitioner has admittedly not provided any record of default available with information utility. The present Petition is liable to be rejected on this sole ground itself.

FINDINGS

26. On going through the submissions made by the Learned Counsel for the both the sides and on perusing the documents produced on record, it is understood that the Corporate Debtor has defaulted in repayment of debt. The Corporate Debtor has acknowledged the disbursement of credit facilities and its liability to repay the same. However, the Corporate Debtor failed to pay. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be moved u/s 7 of the I&B Code.

27. Edelweiss Asset Reconstruction Company Limited as a Financial Creditor has filed this Petition u/s. 7 of the IBC against M/s. Meeti Developers Private Limited, Corporate Debtor, which as per Form 1 of the Petition and other documents produced before this Bench, as on 27.03.2020 (date of filing the Petition) was Rs. 71,32,09,849/-.

28. The Bench notes that the Petitioner is the Assignee of the financial debt which was originally disbursed on 20.11.2016 by ECL Finance Ltd. against a sanction letter dated 14.10.2016. The Bench notes that even though a further sanction of Rs. 30,00,00,000/- was proposed to the Corporate Debtor, however, because of non-compliance, this additional sanction was never disbursed and the total amount actually disbursed and in default is Rs. 55,00,00,000/-.

29. This Bench further notes that money was given on secured non-convertible debentures of an aggregate amount of Rs. 55,00,00,000/- by the Corporate Debtor. The Debenture Trustee has been placed on record by the Petitioner. Also the list of secured documents by way of which the credit facility was secured is placed on the record.

30. Before the Bench, by way of Exhibit F in the Petition is a summary of the total debt as on 27.02.2020. A copy of the same is as under:-

EXHIBIT - F

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 **Edelweiss**
Asset Reconstruction

Summary for MEETI DEVELOPERS PRIVATE LIMITED	
	DATED
	27-Feb-20
PARTICULARS	DUE AMOUNT
PRINCIPAL AMOUNT OVER DUE	27,49,89,000
PRINCIPAL AMOUNT	27,50,11,000
GROSS COUPON OVERDUE INTEREST	8,42,69,876
GROSS COUPON NOT DUE INTEREST	1,59,50,000
- Default Interest on Interest	92,57,096
- Penal Interest on Interest	1,23,74,875
- Default Interest on Principal	3,27,87,730
TDS CERTIFICATE NOT RECEIVED	85,70,273
TOTAL	71,32,09,849



31. Further, before the Bench has also been produced the details of the principal, interest accrued, default on interest and details of penalty

in a tabular form as provided by Financial Creditor.

Principal, Interest, Default on Interest and Penal

SR. N O.	COUPON RATE	DEFAULT RATE P.M.	INT.FROM	INT.TO	DAYS	INTEREST OVER DUE (GROSS)	INTEREST NOT DUE (GROSS)	INT.GROSS	DEFAULT INT. DUE DATE	INT. RECEIVED DATE	FUND RECD (TAKEN GROSS)	DEFAULT INT. (GROSS)	PENAL INT. (GROSS)
1	17.00	2.00	02-Dec-16	01-Jan-17	30	-	-	76,84,932	30-Dec-16	30-Dec-16	76,84,932	-	-
2	17.00	2.00	01-Jan-17	01-Apr-17	90	-	-	2,30,54,795	30-Mar-17	30-Mar-17	2,30,54,795	-	-
3	17.00	2.00	01-Apr-17	01-Jul-17	91	-	-	2,33,10,959	30-Jun-17	04-Jul-17	2,33,10,959	43,429	51,311
4	17.00	2.00	01-Jul-17	01-Oct-17	92	-	-	2,35,67,123	30-Sep-17	28-Sep-17	2,35,67,123	-	-
5	17.00	2.00	01-Oct-17	01-Jan-18	92	-	-	2,35,67,123	30-Dec-17	29-Dec-17	2,35,67,123	-	-
6	17.00	2.00	01-Jan-18	01-Apr-18	90	-	-	2,30,54,795	30-Mar-18	27-Mar-18	2,30,54,795	-	-
7	17.00	2.00	01-Apr-18	01-Jul-18	91	-	-	2,33,10,959	30-Jun-18	29-Jun-18	2,33,10,959	7,19,537	10,15,817
8	17.00	2.00	01-Jul-18	01-Oct-18	92	-	-	2,35,67,123	30-Sep-18	27-Dec-18	1,75,55,556	2,49,192	3,51,800
9	17.00	2.00	01-Oct-18	01-Jan-19	92	-	-	60,11,567	30-Dec-18	28-Dec-18	60,11,568	9,76,906	13,79,161
10	17.00	2.00	01-Jan-19	15-Feb-19	45	-	-	2,35,67,123	30-Mar-19	29-Mar-19	1,15,27,397	91,272	1,28,854
11	17.00	2.00	01-Jan-19	15-Feb-19	45	-	-	1,15,27,397	30-Mar-19	16-Apr-19	1,15,27,397	14,79,723	19,45,937
12	18.25	2.00	01-Apr-19	01-Jul-19	91	86,44,876	2,50,25,000	1,23,75,000	30-Jun-19	16-Apr-19	37,30,124	30,40,538	39,98,515
13	18.25	2.00	01-Apr-19	01-Jul-19	91	2,50,25,000	2,53,00,000	2,50,25,000	30-Sep-19			19,10,150	25,11,978
14	18.25	2.00	01-Jul-19	01-Oct-19	92	2,53,00,000	2,53,00,000	2,53,00,000	30-Sep-19			7,46,350	9,81,501
15	18.25	2.00	01-Oct-19	01-Jan-20	92	2,53,00,000	2,53,00,000	2,53,00,000	31-Dec-19				
16	18.25	2.00	01-Jan-20	27-Feb-20	58	-	1,59,50,000	1,59,50,000	30-Mar-20			92,57,096	1,23,74,875
						8,42,69,876	1,59,50,000						

Edelweiss Asset Reconstruction Company Limited
Registered Office: Edelweiss House, 15, Kasturba Gandhi Marg, New Delhi 110001
Branch Office: UGF-1, Mercantile House, 15, Kasturba Gandhi Marg, New Delhi 110001
www.edelweissarc.com

Edelweiss
Asset Reconstruction

32. The Bench notes that the above table is also important as it clearly demonstrates that the payment made by the Corporate Debtor starting from 30.12.2016 and continuing through several dates in 2017, 2018 and 2019. The last payment was made on 16.04.2019. The Bench notes that the Assignor Bank i.e., ECL Finance Ltd. disbursed the total amount of Rs. 55,00,00,000/- on 20.11.2016 and the Petition was filed in NCLT on 02.03.2020. It can be seen that in terms of Sec. 19 of the Limitation Act, it is well covered under the Limitation Act. The Bench also note that as no payment was made by the Corporate Debtor after 16.04.2019. The account of the Corporate Debtor was declared as NPA on 17.05.2019. The Bench also notes that the Assignor Bank had assigned the debt payable under NCDs in favor of the Petitioner vide an Assignment Agreement dated 21.05.2019 and on the date of assignment, an amount of about Rs. 58,57,21,160/- including interest was payable to the Assignor Bank by the Corporate Debtor.

33. The Bench also notes that Debenture Trustee issued a notice of default on 01.01.2020 to the Corporate Debtor and on 02.03.2020 the present Petition u/s.7 of IBC was filed. The Financial Creditor has also produced on record the default as available with the Information Utility, National E-Governance Services Limited (NeSL). A copy of the same as under:-

Annexure - 3
NESL NATIONAL E-GOVERNANCE SERVICES LIMITED
राष्ट्रीय ई-गवर्नेंस सर्विसेस लिमिटेड

Record of Financial Information - Form C

Unique Debt Identifier: TRUST0034D_NCD 55 Cr.MUM1617.339
Submission ID: 1
Submitted by Creditor group represented by Catalyst Trusteeship Limited
Information as on 15/06/2020

Submitter Information			
Name	Creditor group represented by Catalyst Trusteeship Limited	URN (PAN)	TRUST0034D
Relationship	creditor	Comm. Address PIN	411038
DOI / DOB	22/06/1987	Telephone No.	0000000001
Billing / Comm. Address	GDA House, First Floor, Plot No.85 s.No 94&95, Bhusan Colony (Right), Kothrud Pune	Email ID	**@cfttrustee.com

Other Party Details			
Debtor			
Name	Meeti Developers Private Limited	Relationship	debtor
Party Type	Indian Entity	Regd. / Permanent Address	2nd Floor, MMC Centre, Nr. Vikas Park, Mith Chowky Link Road, Malad (West) Mumbai 400064
Regd. Address PIN	400064	Legal Constitution	Private Ltd
PAN / Other ID	AAECM6425E	Email ID	info@meetiigroup.com

Debt Information			
Type of debt	financial	Debt Reference No.	NCD 55 Cr.MUM1617.339
Debt Start Date	29/10/2016	Debt Currency	INR
Sanction Currency	INR	Sub Type - Debt	credit facility
Funded Type	Funded	Sanctioned Amount	550000000
Facility Name	Debenture	Total Outstanding Amount	733434433.00
Amount Overdue	733434433.00	Account Closed Flag	no

Security Information			
Type of Charge Created	Mortgage	Assets Type	Immovable
Description of Security	Debenture Trust Deed		

Default Details			
Date Of Default	31/03/2019	Default Amount	733434433.00
Total Outstanding Amount	733434433.00		

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34. This matter had come up before the Bench on 12.03.2020, 18.03.2020, 08.01.2021, 29.01.2021 and 18.02.2021. The Bench also notes that the Corporate Debtor appeared only on 29.01.2021 and on 18.02.2021. However, no reply was filed by the Corporate Debtor. The Bench notes that subsequent to the hearing a written submission has been filed by the Corporate Debtor wherein he had admitted a debt due to the Petitioner. The relevant para of his written submission as under:-

"11) It is stated that in case the present Petition is admitted, the Corporate Debtor shall suffer a huge setback on account of the initiation of the Corporate Insolvency Resolution Process. Further, a large number of families who were residing in the Society on the Said Property and who have been forced to shift elsewhere during the redevelopment shall be left in a lurch as the initiation and completion of the Corporate Insolvency Resolution Process shall take considerable time and their lives and livelihoods shall be severely affected.

12) Further, the Corporate Debtor is ready and willing to settle the captioned matter if the Corporate Debtor is given some time so as to arrange for funds and therefore, it is not required to admit the present Petition."

35. Considering the above facts, we come to conclusion that the nature of Debt is a "Financial Debt" as defined under section 5 (8) of the Code. It has also been established that there is a "Default" as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e. existence of 'debt' and 'default', for admission of a petition under section 7 of the I&B Code, have been met in this case.

36. As a consequence, keeping the afore said facts in mind, it is found that the Petitioner has not received the outstanding Debt from the Respondent and that the formalities as prescribed under the Code

have been completed by the Petitioner, we are of the conscientious view that this Petition deserves '**Admission**'.

37. Further that, we have also perused the Form – 2 i.e. written consent of the proposed Interim Resolution Professional submitted along with this application/petition by the Financial Creditor and there is nothing on record which proves that any disciplinary action is pending against the said proposed Interim Resolution Professional.

38. The Financial Creditor has proposed the name of Insolvency Professional. The IRP proposed by the Financial Creditor, Mr. Prashant Jain, having registration No. IBBI/IPA-001/IP-P01368/2018-2019/12131, is hereby appointed as Interim Resolution Professional to conduct the Insolvency Resolution Process.

39. Having admitted the Petition/Application, the provisions of Moratorium as prescribed under Section 14 of the Code shall be operative henceforth with effect from the date of order, and shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

40. That as prescribed under Section 13 of the Code on declaration of Moratorium the next step of Public Announcement of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.

41. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 and Section 15 of the Code and inform

the progress of the Resolution Process and the compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

42. The Petition is hereby "**Admitted**". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of the Order.

43. The Registry is hereby directed to communicate this order to both the parties and the Interim Resolution Professional immediately.

44. Ordered Accordingly.

Sd/-
Chandra Bhan Singh
Member (Technical)

Sd/-
Suchitra Kanuparthi
Member (Judicial)